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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,184

05/04/2007

Janice Ryan

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EXAMINER

WILLIAMS, MONICA L

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,184	<b>Applicant(s)</b> RYAN ET AL.	
	<b>Examiner</b> MONICA L. WILLIAMS	<b>Art Unit</b> 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 6,8-11,14,18,19 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,12,13 and 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/19/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 6, 8-11, 14, 18-19, and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 04/04/2008.
2. Applicant's election with traverse of Species I in the reply filed on 04/04/2008 is acknowledged. The traversal is on the ground(s) that there was no lack of unity of invention stated by the examiner. The disclosed species clearly have a lack of unity as set forth below. The election of species requirement has been rewritten in the form for a national stage application submitted under 35 U.S.C. 371.
3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Species I: Figures 1 and 2

Species II: Figures 3 and 4

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. The claims are deemed to correspond to the species listed above in the following manner:

Species I: 1-5, 7, 12, and 15-17

Species II: 6, 8-11, 13-14, 18-19, and 22

The following claim(s) are generic: 1-4, 12, and 16.

5. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Species II is made from three separate pieces, has handles on either side, those handles have a power socket, adjustable temperature switches, heat switches, and a power light. Species I has a hinged cover, no heating elements in the spacer, and no switches or handles.

The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spacer collar having heating elements must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, 7, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins (2,300,776).

9. In re claim 1, with reference to page 2 col.1 lines 49-54 and col.2 lines 4-8, Collins discloses an electrically heated plant propagator comprising or including a transparent cover (10) characterized in that the cover has an electrically conductive heating element (20) being connectable to an electric power supply by which the heating element heats the inside of the plant propagator when the cover is closed. Not disclosed is multiple heating elements and the heating element specifically being a resistive heater.

10. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have had multiple heating elements, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co v. Bemis Co*, 193 USPQ 8.

11. Collins discloses using a UV light source, however if this is not considered resistive heating, Collins discloses using any other suitable electrified light source which would inherently include incandescent bulbs which heats through resistive heating. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used an incandescent bulb since it is old and well known in the art.

12. In re claim 2, with reference to Figure 1, Collins discloses a soil tray (11) over which the transparent cover may be placed.

13. In re claim 3, with reference to Figure 1, Collins discloses a spacer collar (18) between the cover and the upper rim of the tray.

14. In re claim 4, with reference to page 2 col.1 lines 49-54, Collins discloses the spacer collar is transparent.

15. In re claims 5 and 7, Collins discloses the claimed invention except for the spacer collar being integral with the cover and the spacer collar being integral with the tray. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the spacer collar being integral with the cover and the spacer collar being integral with the tray, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

16. In re claim 12, with reference to page 2 col.2 lines 38-40, Collins et al discloses using a thermostat to ensure that the proper temperature is maintained.

17. In re claim 13, with reference to page 2 col.2 lines 27-38, Collins discloses the spacer collar (18) is electrically heated through the use of electrically conductive heating elements.

18. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins (2,300,776) in view of Yoneda et al (6,725,598).

19. In re claim 15, Collins discloses the claimed invention except for a sensor for sensing condensation.

20. However, with reference to col.3 lines 10-17, Yoneda et al discloses a propagator with a sensor to sense conditions in which condensation may be induced. The advantage of this is to be able to regulate an optimal climate for the plants. Thus it would have been obvious to one having ordinary skill in the art at the time the invention

was made to have modified the propagator of Collins with a sensor as taught by Yoneda et al in order to be able to regulate an optimal climate for the plants.

21. In re claim 16, Collins discloses the claimed invention except for a logic circuit.

22. However, with reference to col.10 lines 7-24, Yoneda et al disclose a propagator with a logic circuit (11) that automatically switches the heating elements on in order to inhibit the build up of condensation. The advantage of this is to be able to regulate an optimal climate for the plants. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the propagator of Collins with a sensor as taught by Yoneda et al in order to be able to regulate an optimal climate for the plants.

23. In re claim 17, Collins discloses the claimed invention except for a temperature sensor.

24. However, with reference to col.2 lines 60-67, Yoneda et al disclose a propagator with a sensor that senses when conditions have changed such that heat may be turned off when an appropriate rise in ambient temperature has been noted. The advantage of this is to be able to regulate an optimal climate for the plants. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the propagator of Collins with a sensor as taught by Yoneda et al in order to be able to regulate an optimal climate for the plants.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONICA L. WILLIAMS whose telephone number is



(571)270-3113. The examiner can normally be reached on Mon to Fri 6:00-3:30,  
Alternate Friday off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/  
Supervisory Patent Examiner, Art  
Unit 3644

MW 05/08/2008